

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 30 July, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF ORO VALLEY acting by and through its TOWN COUNCIL (the "Town")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The State has approved the exchange of \$3,235,000.00 Highway User Revenue Funds (HURF) to the Town for the construction of improvements to First Avenue, and such funds will be repaid to the State by withholding from the Pima Association of Governments (PAG) federal funds and the obligation authority for federal funds in the amount of \$3,823,008.00 in Fiscal Year 2003

4. The State has approved the exchange of \$3,000,000.00 Highway User Revenue Funds (HURF) to the Town for the construction of improvements to First Avenue, and such funds will be repaid to the State by withholding from the Pima Association of Governments (PAG) federal funds and the obligation authority for federal funds in the amount of \$3,542,337.00 in Fiscal Year 2004.

5. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26203
Filed with the Secretary of State
Date Filed: 07/30/03
Janice K. Brewer
Secretary of State
By: Timothy J. Haernewald

II. SCOPE OF WORK

1. The Town will:

a. Provide design plans, specifications and such other documents and services required for the improvements contemplated for First Avenue together with invoices.

b. Be responsible for any additional funds required for design of the Project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulations.

c. Call for bids and award one or more construction contracts for the Project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason.

d. Invoice the State for thirty percent of the project construction cost, for Fiscal Year 2003, at the start of construction.

e. Invoice the State for thirty percent of the project cost, at the thirty percent and sixty percent project completion stages.

f. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State (Local Government Section) with a letter documenting the notice of the approval and acceptance of the project.

g. Invoice the State for the remaining ten-percent of the project cost at the one hundred percent project completion stage, for funding of Fiscal Years 2003 and 2004, after the Town, PAG, and the State representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of construction invoices, advance the Town HURF funds for thirty percent of the project costs at the start of construction, for thirty percent of the project cost at the thirty percent completion stage, for thirty percent of the project cost at the sixty percent completion stage, and for ten percent of the project at the one hundred percent project completion stage, at a total amount of \$6,235,000.00 for construction.

b. Withhold from PAG, federal funds and the obligation authority of federal funds in the amount of \$7,365,345.00 in Fiscal Years 2003 and 2004 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its

independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. 3. Non-Discrimination. The contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

3. Non-Availability of Funds. Every payment obligation of ADOT and State Parks Board under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by ADOT and State Parks Board at the end of the period for which the funds are available. No liability shall accrue to ADOT and State Parks Board in the event this provision is exercised, and ADOT and State Parks Board shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

4. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424)

Town of Oro Valley
Town Manager
11000 North La Canada Drive
Oro Valley, AZ 85737-7015

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF ORO VALLEY

STATE OF ARIZONA

Department of Transportation

By 
PAUL LOOMIS
Mayor

By 
DALE BUSKIRK, Acting Division Director
Transportation Planning Division

ATTEST

By 
KATHRYN CUEVELIER
Town Clerk

RESOLUTION NO. (R) 03- 49

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE STATE OF ARIZONA TO UTILIZE THE HURF EXCHANGE PROGRAMS FOR THE FIRST AVE WIDENING AND BRIDGE CONSTRUCTION: CDO WASH TO TANGERINE RD.

WHEREAS, ORO VALLEY is a political subdivision of the State of Arizona, is vested with all the rights, privileges and benefits, and entitled to immunities and exemptions granted municipalities and political subdivisions under the constitution and laws of the state of Arizona and United States; and

WHEREAS, the widening of First Ave and bridge construction: CDO Wash to Tangerine Rd project is necessary for the public's health, safety and welfare in order to provide for the safe, preserve Town assets and efficient movement of traffic; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 28-6993(f) local government may exchange Surface Transportation Program monies for state highway funds so named the State the HURF Exchange Program; and

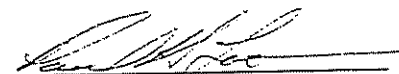
WHEREAS, the TOWN COUNCIL deems it necessary in the interest of providing for health, safety and welfare of the citizens of the TOWN OF ORO VALLEY to enter into an intergovernmental agreement with the State of Arizona for a HURF Exchange for First Ave widening and bridge construction from CDO Wash to Tangerine Rd.

THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA:

That Mayor is authorized to execute the intergovernmental agreement on behalf of the Town of Oro Valley.

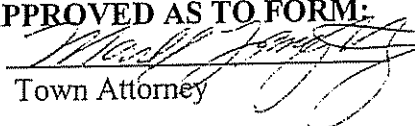
PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 25th day of June, 2003.

TOWN OF ORO VALLEY, ARIZONA


Paul H. Loomis, Mayor

ATTEST:

Kathryn E. Cuvelier, Town Clerk

APPROVED AS TO FORM:

Town Attorney

APPROVAL OF THE TOWN OF ORO VALLEY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF ORO VALLEY, and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 26th day of June 2003.



Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0526TRN (JPA 03-025), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED July 21, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ss

att.